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IN THE
COURT OF APPEALS OF INDIANA

CHRISTOPHER MERSHON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 30A05-0702-CR-73
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HANCOCK SUPERIOR COURT
The Honorable Dan E. Marshall, Judge
Cause No. 30D02-0507-FD-1235

May 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Christopher Mershon appeals the enhancement of his conviction for operating a vehicle while intoxicated from a Class A misdemeanor to a Class D felony.[1] Mershon raises the sole issue of whether sufficient evidence supports the enhancement. Concluding that sufficient evidence exists, we affirm.

Facts and Procedural History

On July 2, 2005, Deputy Robert Harris, of the Hancock County Sheriff's Department, stopped Mershon's vehicle after observing him make a wide right turn. Mershon gave Deputy Harris an Indiana identification card, claiming to have lost his driver's license. Deputy Harris detected an odor of alcohol, and had Mershon complete several field sobriety tests, most of which Mershon failed. Mershon refused to take a chemical test.

The State charged Mershon with operating a vehicle while intoxicated and causing endangerment, a Class A misdemeanor, operating a vehicle while intoxicated, a Class C misdemeanor, and with committing the offenses while having a previous conviction for operating a vehicle while intoxicated within the last five years, a count which enhances a misdemeanor operating while intoxicated to a Class D felony. The jury found Mershon guilty of the two misdemeanor counts,[2] Mershon waived his right to a jury trial on the elevation of the offense to a felony, and the trial court held a hearing on this count.

At this hearing, Deputy Harris testified that he had identified Mershon from the state

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[1] Mershon does not challenge the propriety of the conviction for operating a vehicle while intoxicated.

[2] The trial court entered a judgment of conviction only for the Class A misdemeanor.

identification card presented to him. The State also introduced a certified copy of Mershon's driving record with the Bureau of Motor Vehicles (the "BMV"), showing a conviction on March 28, 2001 for "Operating While Intox." Appellant's Appendix at 70. The trial court found that the State had met its burden of proving the fact of Mershon's prior conviction and entered judgment of conviction for a Class D felony. Mershon now appeals.

Discussion and Decision[3]

Mershon raises the sole argument that sufficient evidence does not support the finding that he was convicted of operating a vehicle while intoxicated within five years of the immediate offense. Our standard of review relating to claims challenging the sufficiency of the evidence is well established. When reviewing a claim of insufficient evidence, we will not reweigh evidence or judge witnesses' credibility. Grim v. State, 797 N.E.2d 825, 830 (Ind. Ct. App. 2003). We will consider only the evidence favorable to the judgment and the reasonable inferences drawn therefrom. Id. We will affirm a conviction if the lower court's finding is supported by substantial evidence of probative value. Id.

The evidence introduced at the enhancement proceeding consisted of the BMV

[3] The State points out that Mershon appears to have filed his Appellate Brief in violation of Indiana Appellate Rule 45(B)(1), which directs that an appellant's brief shall be filed within thirty days of the trial court clerk issuing its notice of completion of the Clerk's Record indicating that the transcript is complete. The Hancock Superior Court Clerk issued such a notice on November 30, 2006. Mershon did not file his brief until February 1, 2007. The Clerk also issued a Notice of Completion of Transcript on January 2, 2007. Although this Notice may seem to cause confusion, we note that the Clerk did not issue this Notice until the day that Mershon's appellate brief was due. Therefore, Mershon cannot claim to have relied upon this Notice. "The appellant's failure to file timely the appellant's brief may subject the appeal to summary dismissal." Ind. App. Rule 45(D). We encourage counsel to adhere to the deadlines set out in our appellate rules. However, as we affirm the trial court's judgment on the merits, we choose not to dismiss the appeal and to

printout and Deputy Harris's testimony. "A certified copy of a person's driving record obtained from the bureau . . . constitutes prima facie evidence that the person has a previous conviction of operating while intoxicated." Ind. Code § 9-30-6-14; see Jones v. State, 716 N.E.2d 556, 558 (Ind. Ct. App. 1999). Mershon recognizes this statute, but argues that several cases previously decided by this court dictate that the evidence introduced against him is insufficient. We disagree.

In Oller v. State, 469 N.E.2d 1227, 1232 (Ind. Ct. App. 1984), opinion on reh'g, 472 N.E.2d 610, we held that a BMV printout was insufficient to establish that the defendant was the same person with the prior conviction. Our holding in Oller rested upon the fact that the BMV printout at issue did not show convictions, merely arrests. Id. Two other cases cited by Mershon also recognized the ambiguous nature of the introduced BMV printouts, which did not specifically indicate that the defendant had been convicted of an offense. See Cunningham v. State, 438 N.E.2d 308, 310 (Ind. Ct. App. 1982) (on petition for reh'g); Warner v. State, 406 N.E.2d 971, 975 (Ind. Ct. App. 1980) (noting that BMV printout was "at best, ambiguous and confusing" and including a reproduction of the printout, which listed "DWI-liquor" under the heading of "description of action"). Here, the BMV report unambiguously indicates that Mershon was convicted of, and not merely arrested for, operating a vehicle while intoxicated; the report identifies the date the offense was committed as well as a "conviction date." Therefore, the reasons for which Oller, Cunningham, and Warner held BMV printouts to be insufficient are not present in this case.

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fully address the issues raised in Mershon's appellate brief. See Kelly v. Levandoski, 825 N.E.2d 850, 856

Mershon also cites Sullivan v. State, 517 N.E.2d 1251, 1253-54 (Ind. Ct. App. 1988), trans. denied, in which we held:

> In recidivist proceedings, a mere document relating to a conviction of one with the same name as the defendant will not suffice to demonstrate that this defendant was, in fact, the person convicted of the prior offense. It has long been recognized that certified copies of judgments or commitments containing the same name or a name similar to a defendant's may be introduced to prove the conviction of prior offenses; however, there must be other supporting evidence to identify the defendant as being the same person named in the documents. Thus, it is apparent that the Bureau of Motor Vehicles (BMV) report, which shows a conviction on the date alleged in the information, alone, will not suffice to establish this defendant's identity as the individual previously convicted in 1984.

(citations omitted). In Livingston v. State, 537 N.E.2d 75, 78 (Ind. Ct. App. 1989), we extended this holding and indicated that records containing the same name, birth date, and social security number would also not be sufficient.[4] We held that evidence introduced by the State— a certified BMV record showing a "'DWI-Liquor' notation" and a certified copy of a docket sheet showing that a defendant with the same name had pled guilty to driving while intoxicated—created too tenuous an evidentiary link to constitute sufficient evidence. Id. at 77-78.

Had the State in this case introduced solely the BMV printout, under Sullivan and Livingston, it would have failed to introduce sufficient evidence to demonstrate that Mershom was the same person who had been previously convicted of operating a vehicle

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(Ind. Ct. App. 2005), trans. denied (noting that this court prefers to decide issues on their merits).

[4] In Livingston, the birth dates on the BMV record and the abstract court record were different. Id.

while intoxicated.[5] However, the State also introduced the testimony of Deputy Harris, who indicated that he obtained Mershon's state identification card during the traffic stop. Mershon argues that, nevertheless, because the identification card was prepared by the BMV, this evidence suffers from the same weakness identified in Sullivan, where we stated: "Here, the only evidence linking this defendant with the BMV's Jerry J. Sullivan is a birthdate contained on documents prepared by the police, without any showing of the information's source, which could have been BMV records." 517 N.E.2d at 1255. Mershon's reliance on this statement is misplaced. It is true that the BMV prepared both the driving record printout and the state identification card, from which Deputy Harris obtained Mershon's identifying information. However, Deputy Harris's testimony indicates not only the content of the information contained on the state identification card, but also the fact that Mershon handed him the identification card during the traffic stop. By handing the identification card to Deputy Harris when asked for identification, Mershon represented that the information contained on the card identified him. This representation establishes the link between Mershon and the person with the identical name, date of birth, and driver's license number

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[5] The State argues that the cases cited by Mershon have been superceded by Indiana Code section 9-30-3-15, which states:

> In a proceeding, prosecution, or hearing where the prosecuting attorney must prove that the defendant had a prior conviction for an offense under this title, the relevant portions of a certified computer printout or electronic copy as set forth in IC 9-14-3-4 made from the records of the bureau are admissible as prima facie evidence of the prior conviction. However, the prosecuting attorney must establish that the document identifies the defendant by the defendant's driving license number or by any other identification method utilized by the bureau.

We need not decide whether this statute, which was passed after we decided Livingston, Oller, and Sullivan, overruled these opinions, as we hold that the State introduced sufficient evidence even under these cases.

identified in the BMV printout.

The certified BMV driving record, which indicates that a Christopher D. Mershon has a previous conviction for operating while intoxicated, along with the testimony of Deputy Harris, indicating that Mershon handed him a state identification card with the same name, birthdate, and driver's license number as that on the BMV record, constitute sufficient evidence from which the trier of fact could find that Mershon had a previous conviction for operating while intoxicated.

Conclusion

We conclude that the State introduced sufficient evidence to support the trial court's judgment.

Affirmed.

SULLIVAN, J., and VAIDIK, J., concur.